

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE: LIBOR-BASED FINANCIAL
INSTRUMENTS ANTITRUST LITIGATION

MDL No. 2262 (NRB)

THIS DOCUMENT RELATES TO:

MAYOR AND CITY COUNCIL OF
BALTIMORE, et al.,

Plaintiffs,

v.

CREDIT SUISSE AG, et al.,

Defendants.

No. 11-cv-5450 (NRB)

I, Shannon R. Wheatman, being duly sworn, hereby declare as follows:

1. I am president of Kinsella Media, LLC (“KM”), an advertising and notification consulting firm in Washington, D.C. specializing in the design and implementation of class action and bankruptcy notification programs. My business address is 2101 L Street NW, Suite 800, Washington, D.C. 20037. My telephone number is (202) 686-4111.

2. This declaration will describe my experience in designing and implementing notices and notice programs, as well as my credentials to opine on the overall adequacy of the notice effort. It will also describe the notices (the “Notice” or “Notices”) and the notice program (the “Notice Program”) proposed here for *In re Libor-Based Financial Instruments Antitrust Litigation*, including how they were developed and why I believe they will be effective and satisfy the requirements of Federal Rule of Civil Procedure 23(c) and due process.

3. This Notice Program is related to the Settlement with Citibank N.A. and Citigroup Inc. (together, “Citibank”).

4. In my declaration on adequacy of the notice program related to the Barclays Bank plc settlement, dated May 25, 2017, and submitted along with my C.V., I detailed my class action notice experience, leadership in the form and content of class action notice, and publications on notice and due process. I also provided my educational and professional experience relating to class action litigation and my ability to render opinions on the overall adequacy of a notice program. *See* ECF No. 220, ¶¶ 3-8.

5. This Notice Program is similar in substantial respects to the one previously developed by KM and approved by the Court in connection with the Barclays Bank plc settlement. Information and analysis relevant to the development of that program was used for this one.

6. KM was retained to design and implement the Notice Program in this Settlement. I submit this declaration to describe the elements of the Notice Program.

NOTICE PROGRAM OVERVIEW

7. In this case, the proposed Notice Program was designed to reach the greatest practicable number of Class Members and ensure that they will be exposed to, see, review, and understand the Notice.

8. Although each case is unique, the methods and tools used in developing the Notice Program for this Settlement have been employed in many other court-approved notice programs.

9. The Class in this case is defined as:

All persons or entities (other than Defendants and their employees, affiliates, parents, and subsidiaries) that purchased in the United States, directly from a Defendant (or a Defendant's subsidiaries or affiliates), a U.S. Dollar LIBOR-Based Instrument and that owned the U.S. Dollar LIBOR-Based Instrument any time during the period August 2007 through May 2010 (the "Class Period").

10. To effectively reach this Class, which consists largely of financial professionals, KM recommends a Notice Program consisting of direct notice, paid media in national newspapers, business and trade magazines, and targeted websites, global earned media with an internationally distributed press release, and a dedicated website. As detailed below, I believe this Notice Program meets due process standards and provides the best notice practicable to the Class under the circumstances. Each of these elements is described in more detail below.

11. I have been involved in drafting the various forms of Notice as described below. It is my opinion that each proposed form is noticeable, clear, concise, and written in plain, easily understood language.

Individual Notice

12. Individual notification will consist of mailing a Long Form Notice of the Settlement and a Proof of Claim to potential Class Members, informing them of their legal rights and how they may participate in or opt-out of the Class.

13. A partial list of Class Members can be compiled based on information provided by Citibank and some of the USD LIBOR panel banks. In addition, KM recommends utilizing mailing lists and databases selected and customized to reach public and private entities and financial professionals who are likely to be Class Members. All told, the final list will represent a merged and de-duplicated combination of the following:

- a. 3,167 counterparties in LIBOR-based instruments during the settlement class period provided by Citibank.
- b. List of other counterparty addresses provided from other defendants. These include:

Defendant	Count
JPMorgan Chase	7,091
RBC	898
Barclays Bank plc	14,580
Bank of America	8,406
Deutsche Bank	5,003
UBS	7,442
Credit Suisse	Self-Notice
HSBC	Self-Notice
TOTAL	43,420

- c. 15,257 institutional investors representing: banks, insurance companies, pension funds, open-end mutual funds, closed-end mutual funds, exchange traded funds, and hedge funds.¹
- d. 8,866 institutional investors representing: 13F filings (the money managers that file quarterly and manage over \$100 million in assets); and 5 Percent filers, including: 13D (filed by a beneficial owner with a 5% position and that has acquired 2% or more of the shares outstanding within the last 12 months) and 13G (filed by an entity with a 5% position and who is not required to file a 13D

¹ Sources: Bloomberg, Pensions and Investments, FDIC Call Report, Institutional Investor's Alpha, and Dun & Bradstreet.

because shares were acquired under normal business practices without trying to exert influence over the security).²

- e. 66,946 state, city, and county government offices, as well as schools (excluding private schools), universities, and healthcare facilities using customized lists purchased from a national company specializing in list development. The lists represent targeted entities and personnel responsible for purchasing, monitoring, and/or issuing municipal bonds or derivatives: state department of transportation, state treasury offices, attorneys general, city treasurers/attorneys, county treasurers/attorneys, public schools and universities, and hospitals.

14. All told, under this program, a Long Form Notice and Proof of Claim will be sent to at least 137,656 persons or entities who have been identified as potential Class Members.

15. Prior to mailing, all addresses will be checked against the National Change of Address (“NCOA”)³ database, which is maintained by the United States Postal Service (“USPS”).

16. Notices that are returned as non-deliverable will be re-mailed to any address indicated by the postal service in the case of an expired automatic forwarding order. Notices returned as non-deliverable, but for which a new address is not indicated by the postal service, will be further searched through a third-party vendor to obtain a more current address. If any such address is found, the Notice will be re-mailed.

Paid Media

17. To supplement individual notification, KM designed a paid media program to





² Source: Vickers

³ The NCOA database contains records of all permanent changes of address submissions received by the USPS for the last four years.


reach Class Members who do not receive a Long Form Notice.


18. KM recommends a Notice Program consisting of advertising in national newspapers, business and trade magazines, and targeted websites.

19. To reach financial professionals, the Publication Notice will appear in the following national newspapers:





NEWSPAPER	AD SIZE	CIRCULATION	SUMMARY
	4.9" x 10"	307,702	America's premier financial magazine, renowned for its market-moving stories. It reaches an audience of top corporate executives, institutional investors, individual investors, and financial professionals.
	6.6875" x 11.0236"	191,793	One of the world's leading business news organizations, providing essential news, comment, data, and analysis for the global business community.
	5.93" x 8.44"	101,224	An authoritative financial news and research organization recognized for its proprietary investing screens, investment ratings, and strong record of identifying market leaders as they emerge.
	5.35" x 7"	1,321,827	A publisher of original business news and financial information with expanded content in arts, culture, lifestyle, and sports.

20. To reach decision makers in various business sectors, the Publication Notice will appear in following business magazines:






MAGAZINE	AD SIZE	CIRCULATION	SUMMARY
	7.125" x 9.75"	1,009,973	Covers critical issues affecting business around the world and introduces senior decision makers to new concepts and people that will impact their lives and

			their businesses.
	7.625" x 9.25"	717,978	A weekly news and business publication written for top business decision-makers and opinion leaders who need a wide range of information about world events.

21. To reach decision makers in various business sectors, the Publication Notice will also appear in the following trade magazines:⁴

MAGAZINE	AD SIZE	CIRCULATION	SUMMARY
	6.875" x 4.625"	443,219	Delivers high quality, relevant content focused on the concerns of top-tier finance chiefs.
	4.5" x 7"	108,000	Delivers essential market information and strategies that advisors need to succeed in their increasingly complex environment.
 <small>The essential monthly journal for professional traders & active investors</small>	5.875" x 7"	50,620	The essential journal for professional traders and active investors.
	4.5" x 7.5"	91,298	Source of information for the financial services industry. This organization reaches the most influential financiers and largest investing institutions globally through print, digital, and integrated custom programs.

⁴ Trade magazines have the right to refuse our ad. KM will make every effort to have the ads placed in the publications as laid out in the original program but will make substitutions as necessary, without going back to the Court for approval. This will be done in order to maintain the notice program timeline.

	4.5" x 7.25"	100,000	A practice management and industry news magazine targeting independent financial planners, advisors, registered representatives, Registered Investment Advisors, CPA planners, and insurance and bank investment representatives. Each issue provides coverage of mutual funds, insurance and annuities, asset allocation, and other investment products.
	6" x 8"	61,359	Delivers news and analysis essential to financial advisers.
	6" x 8"	50,139	Provides industry news to the institutional investment community.
	4.625" x 7.25"	60,600	Provides information on how to apply technical analysis tools to charting, numerical, and computer methods for trading stocks, bonds, mutual funds, options, and commodities (futures).
	4.875" x 6.375"	8,688	Offers municipal bond market coverage with daily breaking news, analysis, and data information.

22. KM recommends incorporating Internet advertising into the Notice Program to provide potential Class Members with additional notice opportunities. Over 96.8% of Business-to-Business Financial Purchase Groups have used the Internet in the past 30 days.⁵

23. Internet advertising delivers an immediate message and allows the viewer to click on a banner advertisement and instantly be directed to the Settlement website for further information. Banner ads are typically located either at the top or side of a website page. Highly engaging animated banner ads are more likely to capture viewers' attention because they include moving images and text.

⁵ 2017 GfK MRI Spring Study.

24. KM will produce Internet advertisements that will provide information on the Settlement. KM will purchase approximately 30,000,000 gross impressions⁶ across various websites, such as those noted below. Impressions will be allocated to maximize exposure during the campaign across websites that are best driving potential Class Members to the Settlement website. Delivery of Internet impressions to specific sites and categories within sites are subject to availability at the time KM purchases the media.

25. To reach decision makers in various business sectors online, targeted Internet banner ads and text ads will appear as follows:

- a. CFA Institute Financial NewsBrief: Daily eNewsletter that delivers the latest investment news and trends from around the globe to approximately 64,000 subscribers. Each NewsBrief includes daily news summaries with links to full articles and reports.
- b. Traders Magazine Online News: Traders is a digital information news service for professionals in the North American institutional trading markets with a focus on the buy-side, including large asset managers, hedge funds, proprietary trading shops, pension funds, and boutique investment firms. Coverage includes buy-side strategy, the interaction of buy-side and sell-side players, technology, and regulations.
- c. PlanSponsor Website: Provides information to pension and institutional retirement services industry decision-makers. Covers news and services dedicated solely to helping employers and financial advisors with retirement plans and benefit programs on behalf of their employees or clients.

⁶ Gross impressions are the total number of times a media outlet containing the Notice is seen. This figure does not represent the total number of unique viewers of the Notice, as some viewers/readers will see the Notice in more than one media outlet.

- d. Business-to-Business Websites: Targets websites that provide access to key business stakeholders while they are making business decisions. Sites may include ClearView Financial Media and CFO.
- e. Channel Placement (Business/Finance/Stocks & Investing): Sites may include, Business Insider, The Motley Fool, MarketWatch, Daily Stocks, NASDAQ, Morningstar, InvestingChannel, Institutional Investor, Bonds Online, Money, Fortune, and Forbes.
- f. Contextual/Behavioral Targeting: Use keywords/phrases to locate online users while they are viewing online content based on current and past online behaviors (may include investing, bonds, swap credit, institutional instruments/investing, municipal, pension funds, and small businesses). Sites may include Seeking Alpha, Investing Daily, and CNN Money.
- g. LinkedIn: Ads will be targeted to specific groups formed by LinkedIn users, which may include research analysts, portfolio managers, risk managers, and financial advisors who work in the investment management community and financial services industry. Member groups may include: Strategic Finance Group, Financing Professionals, Institutional Investors, Portfolio Managers, Chief Financial Officer, Pension and Employee Benefits Specialists, Municipal Bond Forum, Hedged Mutual Funds, Local Government & Municipal Knowledge Base, and Swaps & Derivatives.⁷

26. KM will sponsor keywords and phrases with major search engines, including: Google, Bing, and other search partners. In order to help search engine users locate the informational website about the Settlement, KM will purchase sponsored links to appear when searchers enter certain terms. When a user searches online for one of the specified search terms

⁷ Due to limited inventory, placement in trade magazines or on trades websites is not guaranteed. If KM is unable to place the ads, we will run ads on LinkedIn to reach a similar audience.

or phrases, an advertisement will appear on the results page that will point users to the website.

Earned Media

27. An earned media program will also be implemented to amplify the paid media and provide additional notice to Class Members. The earned media program includes a global press release distributed through Business Wire to key financial and business media, with coverage of newspapers, television, radio, news agencies, analysts and business publications/editors in the Americas, including the United States, Canada and Latin America, Asia-Pacific, Europe, Middle East, and Africa. The distribution includes a global mobile audience via a variety of platforms and aggregators including AP Mobile, Yahoo! Finance and Viigo. The press release will be translated into Arabic, French, German, Portuguese, Spanish, simplified-PRC Chinese, traditional Chinese, Japanese, and Korean. It will highlight the toll-free telephone number and Settlement website address, so that Class Members can obtain complete information.

Website

28. An informational, interactive website is a critical component of the Notice Program. The Settlement Administrator will establish a website at www.USDollarLiborSettlement.com to enable Class Members to get information on the Settlement. By accessing the website, Class Members will be able to file a claim and obtain additional information and documents about the Settlement, including: the Long Form Notice, Court documents, frequently asked questions, and other information. Class Members will be able to download Notice materials.

Other Administration Components

29. A toll-free phone number will be established to allow Class Members to call and request that a Notice be mailed to them or listen to frequently asked questions.

30. A post office box will be established to allow Class Members to contact Class Counsel by mail with any specific requests or questions.

THE FORM AND CONTENT OF THE NOTICES

31. Attached as Exhibits 1 and 2 are copies of the Long Form Notice and Publication Notice. Class Members who request a Proof of Claim will have the opportunity to fill out a Proof of Claim, online or in hard copy, substantially in the form of Exhibit 3.

32. The Notices effectively communicate information about the Settlement.

33. Rule 23(c)(2) of the Federal Rules of Civil Procedure requires class action notices to be written in “plain, easily understood language.” KM applies the plain language requirement in drafting notices in federal and state class actions. The firm maintains a strong commitment to adhering to the plain language requirement, while drawing on its experience and expertise to draft notices that effectively convey the necessary information to Class Members.

34. The Publication Notice is designed to capture the Class Member’s attention with clear, concise, plain language. The Notice directs readers to the case website or toll-free number for more information. The plain language text provides important information regarding the subject of the litigation, the Class definition, and the legal rights available to Class Members. No important or required information is missing or omitted. In fact, this Notice states all required information without omitting significant facts that Class Members need to understand their rights. The Notice also refers readers to the Long Form Notice which is available to those who

call or visit the website.

35. The Long Form Notice provides substantial information, including all specific instructions Class Members need to follow to properly exercise their rights, and background on the issues in the case. It is designed to encourage readership and understanding in a well-organized and reader-friendly format.

36. In preparing the Notices in this Settlement, I have employed communications methods that are well-established in my field. I have embraced the high standards embodied in the Advisory Committee's notes accompanying the 2003 changes to Rule 23(c)(2):

The direction that the class-certification notice be couched in plain easily understood language is added as a reminder of the need to work unrelentingly at the difficult task of communicating with class members.

CONCLUSION

37. It is my opinion that the Notice Program provides the best notice practicable under the circumstances. It is consistent with the standards employed by KM in notification programs designed to reach class members. The Notice Program, as designed, is fully compliant with Rule 23 of the Federal Rules of Civil Procedure and satisfies due process requirements.

I declare under penalty of perjury that the foregoing is true and correct. Executed in Souderton, Pennsylvania this 6th day of September 2017.



Shannon R. Wheatman, Ph.D.